Remarks

Specification

The specification has been amended to provide proper antecedent basis for the phrase "computer-readable medium".

Claim rejections 35 USC § 101

Claims 11 and 12 are amended to specify that the computer program product comprises a computer-readable medium storing and/or recording the instructions. The specification is amended without prejudice to avoid stating that the product can be an electrical signal. Accordingly it is submitted that claims 11 and 12 unambiguously relate to statutory subject-matter claimed in the form of functional descriptive material encoded on a computer-readable medium in line with MPEP 2106.01.

Claims 13 and 14 were rejected as allegedly failing to provide any indication that hardware is performing certain steps (i.e. the software per se). Claims 13 and 14 have been amended to specify that the system is a computer-implemented system, thereby requiring hardware and being clearly not software per se.

It is further pointed out that claim 13 also required the hardware-implemented elements of a processor and a memory. Claim 14 requires hardware in the form of a contact center and a network connection at least.

Claim rejections 35 USC § 102

Rejection of claims 1-16 as being anticipated by Flockhart et al.

In relation to claim 1, Flockhart fails to disclose or fairly suggest several claim limitations, and for each such claim limitation which is not disclosed or suggested, Applicants respectfully submit that the allegation of anticipation is erroneous.

1.   **"Creating a new software object for said received contact"**

This new software object is alleged to be present "since the queue is a software data structure implemented by a computer". By this reasoning, all data stored in a computer memory must be a "software object".

Applicants submit that the queue data of Flockhart is not in fact a software object at all. The queue data of Flockhart fulfils the function of recording data about the contact which can be used to route the call to an agent. A "software object" according to claim 1, however, is a more sophisticated entity which must be able to include references to other software objects, as will be discussed below in more detail.

2.   **"Adding to said new software object a reference to said at least one other software object"**

This is at the heart of why the queue data of Flockhart cannot be regarded as software objects (see point 1 above). Claim 1 requires that a software object (not simply data within a queue) is firstly created, and then modified by adding a reference to another such object.

The Office Action alleges that this feature is disclosed at col. 5, lines 7-18 and 43-46 of Flockhart, which discloses nothing more than a conventional queue which is not represented by software objects and wherein there is no reference from any object to any other object. To allege that this is inherent because "the head position has a reference to the next position, all the way to the tail in order to determine the value of the calls" is not supported by the disclosure of Flockhart. The various data entries do not have references to one another as alleged.

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Furthermore, the claim language requires the step of adding a reference to a software object created in an earlier step. Placing a data entry in a queue data structure involves creation only (of a data entry, not of a software object), and involves no subsequent addition of any references.

3.   "Storing in memory a collection of said software objects each containing said reference to at least one other software object; whereby said stored collection of said software objects provides a prioritised queue"

Flockhart discloses, at the most, the storage in memory of a collection of data elements each of which has a place in a queue which is maintained separately by the system. This misses the crucial benefit of this invention – namely that the invention allows one to inherently provide for a prioritised queue simply by maintaining a collection of software objects each of which points to another of the software objects.

In other words, the collection of software objects in the present invention effectively **is** the queue; while for Flockhart the collection of data elements **requires the context of a queue data structure** to have any usefulness or meaning. The feature underlying this fundamental difference, which has been referred to several times above, is the priority-based reference or pointer from the newly created software object to another existing software object. The net effect of adding references from each new software object to existing software objects is that the aggregate collection of such objects has the queuing information built into it.

Such a collection is stateless, unlike Flockhart's queue and is therefore more robust and failure resistant.

Claim rejection 35 USC § 103

<u>Rejection of claim 17 over Flockhart et al. in view of Wood et al.</u>

Claim 17 is dependent on claim 6 and thus indirectly on claim 1. It thus benefits from the patentability of claim 1 for at least the reasons discussed above.

Wood makes no disclosure that a contact manager memory space and a queuing module memory space are each provided. Wood makes no suggestion that a replication service is provided. The entire argument based on Wood seems to be based on inherency, but without there being any teaching of how the specifically claimed integers of claim 17 would be arrived at.
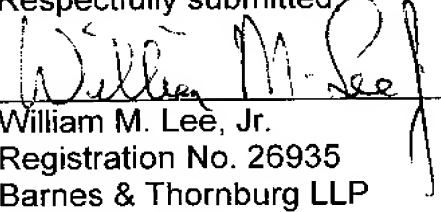
The fact that a certain result or characteristic <u>may</u> occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic <u>necessarily</u> flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

For these reasons, the suggested combination fails to teach or suggest each of the claimed integers of claim 17.

In view of the amendments and arguments made herein, Applicants respectfully request the examiner withdraw the rejections, and allow the application.

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Respectfully submitted

William M. Lee, Jr.
Registration No. 26935
Barnes & Thornburg LLP
P.O. Box 2786
Chicago, Illinois 60690-2786
(312) 214-4800
(312) 759-5646 – Fax